Special Issue: **Ike's Bill to Make Deportable Aliens of Native Radicals**

I. F. Stone's Weekly

VOL. 2, NUMBER 2 FEBRUARY 1, 1954 WASHINGTON, D. C. 15 CENTS

An Old Police State Custom

I

What The Administration Bill Would Do

The day President Eisenhower proposed that Communist conspirators be deprived of citizenship, a bill (S. 2637) to that effect was introduced by Senator Smith (R. Maine). But this merely said that any citizen "convicted of conspiring to advocate overthrow of the Government . . . by the use of force and violence, shall forfeit all rights of citizenship and shall be ineligible to hold any office of trust or profit under the United States." The drafting was clumsy. Under this a man could advocate overthrow without losing these rights; only "conspiracy to advocate" would be penalized. The effect was unclear. Many Federal and State statutes provide for loss of citizenship rights on conviction for a felony. Was this all the Administration intended?

The question was answered 11 days later. A new bill (S. 2757) was introduced on that day jointly by Mrs. Smith and Senator Ferguson (R. Mich.). This had been carefully drafted, presumably by the Department of Justice. Its terms (see text on page two) disclosed that the Administration intended more than deprivation of those citizenship rights (jury service, voting, election to office, etc.) which ordinarily follow conviction of a crime. The intention disclosed was to go the whole way and denationalize or expatriate native born radicals, turning them into deportable aliens, subject to exile or lifetime police surveilllance under the terms of the Immigration and Nationality Act of 1952, the so-called McCarran-Walter Act.

Though the Ferguson-Smith bill covers both native and naturalized citizens, it is aimed primarily at the native born. In practice, no new legislation is needed for aliens or naturalized citizens convicted under the Smith Act for advocating or conspiring to advocate revolutionary doctrine. Aliens are deportable on such conviction, and naturalized citizens are subject to denaturalization and then to deportation. The device is to charge that their conviction shows they obtained their naturalization fraudulently, i.e., by concealing their political views and taking their oath of allegiance falsely. The Ferguson-Smith bill strictly speaking is needed only in the event that a naturalized citizen could prove that he did not become a radical until after he was naturalized. The prime objective of the bill is to get at native born radicals, and to turn them into stateless persons.

II

What Statelessness Would Mean

This statelessness, under existing law, would be more than a sinister abstraction. Section 242 (d) of the McCarran-Walter Act is a skilfully designed instrument for the lifetime harassment of radicals who cannot be deported because no other country will take them. It provides that if a deportable alien has not been deported within six months, he is thereafter subject to supervision as long as he lives or remains in this country. The Attorney General is empowered to make such regulations as he sees fit for this supervision. But, as if to guard against the chance appearance of a liberal Attorney General, the law says "such regulations shall include" certain provisions.

The stateless alien must "appear from time to time" before an immigration officer. He must "submit, if necessary, to medical and psychiatric examination"—this can be a subtle kind of torture. He must "give information under oath as to his nationality, circumstances, habits, associations and activities, and such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper," i.e. he must turn informer, and inform under oath, subject to the penalty of perjury. He must "conform to such reasonable written restrictions on his conduct or activities as are prescribed by the Attorney General in his case." Failure to obey these restrictions, to give information, to submit to examination or to obey any other regulation is declared a felony, punishable by a fine of not more than $1,000, imprisonment for not more than one year, or both.

The kind of regulations the Attorney General may impose is described in Justice Douglas's indignant opinion in Yanish v. Barber (73 S. Ct. 1105) handed down last May 16. An alien employe of the *People's World* in California, after 35 years in this country, was ordered deported to Russia as a Communist. Since Russia will not take deportees, he faced perpetual imprisonment unless released on bond. Under the section of the McCarran-Walter Act just described, the Attorney General ruled that he could go free on bond only under certain conditions. Yanish refused to accept those conditions, filed a petition for habeas corpus but was refused bail, effectively preventing him from pursuing his appeal. Justice Douglas granted bail.

Among the restrictions the Attorney General seeks to impose in this case is that the alien "shall refrain from associating with any person, knowing or having reasonable ground to believe that such person is a member of or affiliated with" the Communist party and shall disassociate himself from "support or other activity . . . in furtherance of the doctrines and policies of the Communist party" or any affiliate. "Taken literally," Mr. Justice Douglas said, this would "prevent him from living with his Communist wife or going to a movie with his Communist son." It would also, Mr. Justice Douglas added "require applicant to give up his job

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

One of Hitler's First Measures Was to Expatriate Opponents . . .

with the *People's World*—a job which so far as the record shows is not itself an illegal undertaking either under state or under federal law." Should the Ferguson-Smith bill pass, such restrictions could be imposed on native born as well as alien radicals.

III

The Outlook in Congress

Unfortunately the chances of passage are good unless sufficient public opposition can be aroused. The tumultuous applause which greeted the proposal when made by the President in his annual message shows the state of mind that grips the Congress. If the bill gets out of committee, passage is certain. The Congresssman who votes against it will have to explain why he was against something which was anti-Communist, a difficult task in this atmosphere. The mood is much the same as that of 1940 when the Smith Act was passed. "The mood of this House," Congressman T. F. Ford (D. Cal.) remarked at that time, "is such that if you brought in the Ten Commandments today and asked for their repeal and attached to that request an alien bill, you could get it." Substitute Communist for alien and the description is again applicable.

The chances of bottling up the legislation in committee are almost nil. The measure has full Administration support. The committees which will have jurisdiction in either House are hardly strongholds of liberalism. The chairman of the Immigration subcommittee of the House Judiciary Committee is Graham (R. Pa.), no xenophile or libertarian. The other members are Walter (D. Pa.), Thompson (R. Mich.), Hyde (R. Md.), and Celler (D. N.Y.).

The Immigration subcommittee of the Senate Judiciary Committee is headed by Watkins (R. Utah). The other Republican members are Hendrickson (N.J.), Dirksen (Ill.), Welker (Idaho), and Butler (Md.). The Democrats are McCarran (Nev.), Kilgore (W. Va.), Eastland (Miss.), and Kefauver (Tenn.). This is not a heartening array.

Except for the ever dependable Celler, the few liberal Democrats on both committees have kept silent. Kilgore's office said he was waiting for the hearings and Kefauver could not be reached. It is a measure of how bad the bill is and how low is the state of liberalism that the only vocal opposition in Congress (again except for Celler) has come—*mirabile dictu*—from McCarran and Walter, the "co-authors" of the so-called McCarran-Walter Immigration and Nationality Act. McCarran grumbled that the President's proposal was "half-baked" and Walter declared that it would take a constitutional amendment to deprive a native born American of his citizenship. In this he agreed fully with Celler's view that the bill was "ill-considered" and unconstitutional.

How Der Fuehrer Did It

"The law of Germany adopted July 14, 1933, is especially noteworthy in this connection. It provides that any naturalization which took place between Nov. 9, 1918, and Jan. 30, 1933, may be cancelled if it is not regarded as desirable. A decree of July 26, 1933, lists as tests of desirability national principles, racial, political, and cultural viewpoints, and provides that they are especially applicable to Eastern Jews, unless they fought at the front in the war or have rendered special service to German interests. This decree adds as another group who may not be regarded as desirable those who have been guilty of severe offenses or a crime or who have acted in any way prejudicial to the welfare of the State and people."

—29 Am. Journal International Law 263

IV

Turning Back The Clock

Like so much of the legislation being spawned in this period, as a free America slips further down the road toward a police state, the Ferguson-Smith bill (which ought better to be called the Eisenhower-Brownell bill) is a sharp departure from American legal and philosophical tradition. For more than a century and a half, expatriation was regarded by the American republic as a right, not as a means of punishment. In feudal society, man was either a serf or a vassal; his status was fixed by custom, necessity and law. Under monarchy, he was a "subject." It was only with the American and the French Revolutions that he became a "citizen" and the question of citizenship could arise.

A "subject" could not free himself from his obligations to a monarch by removing to another country. It was on this issue that the American Republic found itself embroiled

Text of the Administration Bill

Introduced by Senators Ferguson (R. Mich.) and Smith (R. Me.): "To amend the Immigration and Nationality Act to provide for the loss of nationality of persons convicted of certain crimes.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the 'Expatriation Act of 1954'.

Sec. 2, Paragraph (9) of subsection (a) of section 349 of the Immigration and Nationality Act (66 Stat. 163,268; U.S.C., title 8, sec. 1481 (a) (9)) is amended to read as follows:

"(9) committing any act of treason against, attempting by force to overthrow, or bearing arms against, the United States, violating or conspiring to violate the provisions of title 18, U.S.C., secs. 2383 or 2385, or engaging in a conspiracy in violation of title 18, U.S.C., sec. 2384, if and when he is convicted thereof by a courtmartial or by a court of competent jurisdiction; or".

"Sec. 3. Subsection (a) of section 241 of the Immigration and Nationality Act (U.S.C., title 8, sec. 1251 (a) is amended (1) by striking out the period at the end of paragraph (18) and inserting ";or", and (2) by inserting after paragraph (18) a new paragraph reading as follows:

"(19) became an alien by reason of loss of United States nationality under paragraph (9) of subsection (a) of section 349 of this Act, and is found by the Attorney General to be an undesirable resident of the United States."

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

...Even McCarran and Walter Are Appalled By Ike's Bill

from the very first moment of its existence with European monarchs. One of the complaints in the Declaration of Independence was that George III had obstructed the naturalization laws in the Colonies. The War of 1812 was fought largely over the issue of whether Great Britain could seize naturalized Americans on the high seas and impress them into her service on the ground that a Briton could not lawfully give up his status as a subject. (It was not indeed until 1870 that British law recognized the right of the subject voluntarily to renounce his allegiance and choose another country.)

As a nation formed of emigrants from the Old World, America insisted that expatriation was a natural right. Jefferson (in this—as in much else—echoing Locke) drafted a famous provision of the Virginia Code in 1779 saying, expatriation was a "natural right which all men have of relinquishing the country in which birth or other accident may have thrown them." (10 Hening, Statutes 129). Eighteenth Century radicals harked back to the best days of the Roman Law. Cicero in a famous defense of a naturalized Spaniard accused of falsely acquiring Roman citizenship successfully argued the principle that no man could be deprived of citizenship against his will and that every man had a right freely to choose his citizenship, calling it one of the fundamentals of Roman liberty (see box on this page). Both Madison and Monroe denounced the English doctrine of perpetual allegiance in the controversies which led to the war of 1812.

Much of America's diplomatic correspondence and public agitation in the field of foreign policy during the Nineteenth Century revolved around our insistence that men had a right freely to choose their own country. "Popular resentment of British prosecutions of naturalized American citizens participating in the Fenian rebellion in Ireland resulted in Congressional enactment of the statute of 1868, which declared expatriation to be an inherent right." (66 Harvard Law Review 731). There were acrimonious disputes with the Czarist government because it seized naturalized Americans of Russian origin on their return to Russia and refused to recognize their American passport and nationality.

V

From Privilege to Punishment

Thus for more than a century and a half expatriation in this country was regarded as a natural right of the individual, a privilege. It was not until 1940 that it was written into the law as a punishment. This occurred in the same Congress which passed the Smith Act, our first peacetime sedition statute since the Alien and Sedition laws. The immigration and nationality laws were being codified; an amendment on the Senate side added a novel provision. It provided [Sec. 349 (a) (9)] for deprivation of citizenship whether acquired by birth or naturalization for "committing any act of treason against, or attempting by force to overthrow, or bearing arms against the United States, if and when he is convicted thereof by a court martial or by a court of competent jurisdiction." This was carried over in the McCarran-Walter Act.

Until that time, a native born citizen was held to have lost his nationality only when he renounced his citizenship and swore allegiance to another country, or took some step—enlisting in its armed forces, voting in its elections, or serving as one of its officials are examples—which could be held to imply renunciation of citizenship. Citizenship was something the native born could only renounce; it could not be taken away from them. This new provision was sometimes reconciled with the earlier principle by asserting that to commit an act of treason, to attempt overthrow by force or to bear arms against the United States was to take a step implying renunciation of citizenship.*

Whatever the constitutionality of this provision, it differs sharply from that proposed in the Ferguson-Smith bill. Treason—thanks to the protection which the Constitution provides for individuals accused of that crime—requires proof

* Congressman Walter told the writer, however, that he did not make this distinction. He interprets even this provision as merely taking away rights of citizenship, as on conviction for felony, and not as turning a native-born citizen into a deportable alien.

2,000 Years As a Human Right

"Article 11.(2) Everyone has the right to leave any country, including his own, and return to his country.

"Article 13. Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality or denied the right to change his nationality."

—United Nations, Declaration of Human Rights

"That no one should be forced to change his citizenship against his will, or remain in it against his will. These are the firmest foundations of our liberties."

—Cicero, In Defense of L. Cornelius Balbus, 56 B.C.

What The Constitution and the Supreme Court Say

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

—Amendment XIV, U.S. Constitution

"The Fourteenth Amendment, while it leaves the power where it was before, in Congress to regulate naturalization, has conferred no authority upon Congress to restrict the effect of birth, declared by the Constitution to constitute a sufficient and complete right to citizenship."

—U.S. v. Wong Kim Ark, 169 U.S. 649 (1898)

". . . while some of its [i.e. U.S. v. Wong Kim Ark's] teachings seem to have been occasionally forgotten or whittled down in recent years, it has never been overruled . . . Congress has been given control over only one means of creating U.S. citizenship, namely by naturalization. It has the power to create and to condition that grant of citizenship, but it is wholly devoid of any power to destroy citizenship by birth."

—Okimura v. Acheson, 99 F. Supp. 587 (1951) Vacated on other grounds 342 U.S. 899 (1952)

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Logical Next Step — An American Siberia . . . ?

of overt act and two witnesses to each act. Bearing arms against the United States is a crime too clear for abuse. Attempting by force to overthrow the government is quite different from the "advocacy" or "conspiracy to advocate" which is made criminal by the Smith Act. The former requires overt act or preparations for action; the latter, as current prosecutions show, may rest on extremely tenuous grounds. No Communist has yet been prosecuted for advocacy. "Conspiracy to advocate" is a cover for absence of proof of advocacy; convictions are obtained not on the basis of what the defendants advocated but by linking them with certain books by Marx, Lenin and Stalin.

For conviction under the conspiracy provision of the Smith Act, it is not necessary ever to have "advocated." The only proof required is that one "conspired" to advocate at some future time. It is not necessary to be a member of the Communist party to be linked with the "conspiracy", nor even to agree with all its aims. The murky law of conspiracy is made to order for repressive prosecutions; anyone who furthers a conspiracy, even by acts otherwise lawful, may be held liable as a co-conspirator. To provide that native born Americans may be declared "stateless" for so vague a political offense would be merely to take over into American law the common practice of police States, whether Fascist or Communist. Hitler's Reich, and Mussolini's Italy, Franco Spain and Peron's Argentina, provide grim precedents. The Soviet code makes deprivation of citizenship one of the punishments for a long list of political crimes and for political opposition. Eisenhower and Brownell are adopting an old police state custom.

VI

What Will The Courts Do?

As politics, the Ferguson-Smith bill represents the betrayal of American democracy by the respectables; Eisenhower, Brownell and these two Senators seek to ensure their own political future by outdoing McCarthy. In this they recall the precursors of Fascism in Austria, who sought to fight the Nazi tide by dabbling in anti-Semitism on their own. As law, it begins a process which, once permitted, has no logical limit short of the severest limitations on dissent. One example will suffice. The McCarran-Walter bill provides for the deportation of any alien who commits contempt of a Congressional investigating committee; why should this not some day be extended to denaturalization and expatriation?

What will the courts do? Historically and currently they have proven poor guardians of basic liberties. The Fourteenth amendment does make all native born persons citizens. The Supreme Court in a famous decision in 1898 did hold (see box on page three) that this means Congress has no right to deprive a native born American of his nationality.

Among some lawyers, on the basis of rather vague *dicta*, the Court is said to have receded from this view in *Mackenzie v. Hare* (239 U.S. 299) but as Judge Magruder in the First Circuit pointed out (161 F2d 860) even in that decision the Supreme Court said "It may be conceded that a change of citizenship cannot be arbitrarily imposed, that is, imposed without the concurrence of the citizen." A Federal District Judge in Hawaii recently held unconstitutional (see same box, page 3) those provisions of the 1940 Act which deprive a native born American of his citizenship without clear proof of voluntary renunciation but this was remanded by the Supreme Court and the point is still open.

The indivisibility of liberty is being graphically demonstrated to our generation. For a half century the law, in dealing with the alien and the naturalized citizen, has been growing increasingly arbitrary and repressive; the exile of foreign born radicals has become a familiar feature of the legal landscape. Ugly precedents now threaten the native born as well; this new Ferguson-Smith bill makes the fight against the Walter-McCarran Act urgent for the native as well as the foreign born. The move to deprive "Communist conspirators" of citizenship comes at a time when it takes very little in the way of non-conformity to provoke suspicion and invite attack as Communistic. The fight against this bill is crucial in the struggle to keep our America free.

If You Have Not Yet Subcribed or Renewed, Please Help By Doing So Now

This Is Expiration Time

PLEASE RENEW NOW

I. F. Stone's Weekly, 301 E. Capitol, Wash. 3, D. C.

Please renew (or enter) my sub for the enclosed $5:

Name _____

Street _____

City _____ **Zone** _____ **State** _____

Enter this gift sub for $4 more (money enclosed):

(To) Name _____

Street _____

City _____ **Zone** _____ **State** _____

2-1-54

I. F. Stone's Weekly
Room 205
301 E. Capitol St., S.E.
Washington 3, D. C.

NEWSPAPER

Entered as
Second Class Mail
Matter
Washington, D. C.
Post Office

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED